

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

July 8, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:10MD-202

MAUI

Amend Prior Board Action of November 22, 2010 (D-6) Issuance of Term, Non-Exclusive Easement to Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Mathew Ballenger, Trustee of the Revocable Trust Agreement of Mariana Van Blom dated March 16, 1983, for Deck Purposes; and Authorize a One-Year Holdover for Lease of Non-Exclusive Easement S-5217, Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Walter Van Blom and Mariana Van Blom, Trustees of the Van Blom Family 1995 Revocable Trust, Lahaina, Maui, Tax Map Key: (2) 4-5-001:seaward of Parcel 4.

BACKGROUND:

The Land Board at its meeting of November 22, 2010, under agenda Item D-6, approved staff's recommendation to issue a new 65-year, non-exclusive easement to Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Mathew Ballenger, Trustee of the Revocable Trust Agreement of Mariana Van Blom dated March 16, 1983. The Board further amended staff's recommendation by replacing "concrete piers" with "deck" in staff's submittal.

REMARKS:

Unfortunately, the Ballenger and Van Blom Family, and we did not obtain the Legislative concurrent resolution needed when leasing State submerged lands and lands beneath tidal waters as required under Section 171-53, Hawaii Revised Statutes. We have received Governor's approval.

Currently, Lease of Non-Exclusive Easement S-5217 will be expiring on July 31, 2011 and staff will have to work with the Ballenger and Van Blom Family in obtaining the legislative concurrent resolution from the Twenty-Seventh Legislature in 2012. The one-year holdover will allow the Ballenger and Van Blom Family current use to continue.

To date, the appraisal report has been completed (by ACM consultants) and the Ballenger and Van Blom Family have been notified the annual rent is going to be \$26,500. The Ballenger and Van Blom Family would like to change the easement consideration from annual payments with ten-year reopenings to a one-time payment. If okay with the Land Board, they would also like to have an installment agreement with reasonable interest paid over time. Staff has no objections to this request.

RECOMMENDATION: That the Board:

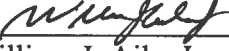
1. Amend its prior Board action of November 22, 2010, under agenda item D-6 by adding:
  - A. Authorize a one-year holdover for Lease of Non-Exclusive Easement S-5217, Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Walter Van Blom and Mariana Van Blom, Trustees of the Van Blom Family 1995 Revocable Trust.
  - B. Comply with all terms and conditions of Lease of Non-Exclusive Easement S-5217 during this one-year holdover period.
  - C. Rent shall be \$9,350 per year.
  - D. Delete Annual Rent and Rental Reopenings, and replace with One-Time Consideration.
  - E. Date of valuation should be August 1, 2012.
  - F. Authorize the Chairperson to negotiate an installment agreement for the one-time payment for the easement to be paid over time, with interest, as may be necessary or appropriate.
2. All terms and conditions listed in its November 22, 2010, under agenda Item D-6 approval to remain the same.

Respectfully Submitted,



Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

## EXHIBIT 'A'

Land Board submittal approved and  
amended by the Land Board at its  
meeting held on November 22, 2010  
(D-6)

**AMENDED**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 22, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:10MD-202

MAUI

Issuance of Term, Non-Exclusive Easement to Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Mathew Ballenger, Trustee of the Revocable Trust Agreement of Mariana Van Blom dated March 16, 1983, for Deck Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-001:seaward of Parcel 4.

APPLICANT:

Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988.

Mathew Ballenger, Trustee of the Revocable Trust Agreement of Mariana Van Blom dated March 16, 1983.

LEGAL REFERENCE:

Section 171-13 and 53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of government submerged land situated at Lapaakea, Lahaina, Maui, identified by Tax Map Key: (2) 4-5-001:seaward of Parcel 4, as shown on the attached map labeled Exhibit A.

AREA:

1,312 square feet, more or less.

ZONING:

State Land Use District:  
County of Maui CZO:

Conservation  
Historic District 2, Special Management Area

*As Amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES *BN*  
AT ITS MEETING HELD ON

*November 22, 2010*

D-6

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_ NO  
\_\_\_\_ X

CURRENT USE STATUS:

Encumbered by Lease of Non-Exclusive Easement S-5217, Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Walter Van Blom and Mariana Van Blom, Trustees of the Van Blom Family 1995 Revocable Trust, Grantees, for right, privilege, and authority for the maintenance and repair of existing concrete piers and for use, repair, and maintenance of the existing improvements constructed thereon. Lease to expire on July 31, 2011. Last rental reopening occurred on August 1, 2001. Rent is currently \$9,350 per annum.

CHARACTER OF USE:

Right, privilege, and authority for the maintenance and repair of existing deck and for use, repair, and maintenance of the existing improvements constructed thereon.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Annual rent to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, and 50th years of the lease term, by staff or independent appraisal.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is

considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states: "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." See Exemption Notice attached as Exhibit "C".

The Land Board at its meeting of April 28, 1989, under agenda Item H-7, approved the Applicant's after-the-fact conservation district use application for commercial use of submerged State land and permission, through a grant of easement or other instrument. (CDUA #MA-11/29/88-2210)

#### DCCA VERIFICATION:

Not applicable. The Applicants as a landowner is not required to register with DCCA.

#### APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent.

#### BACKGROUND:

The Land Board at its meeting of April 28, 1989, under agenda Item H-7, approved an after-the-fact conservation district use permit for commercial use of submerged State land and permission, through a grant of easement or other instrument, for the continued use of this area. The Board authorized a \$500 fine for unauthorized use and occupancy of submerged State lands. Briefly, the existing structure is a three-level deck supported by concrete pilings which have been in place since the 1920's or 1930's when the original structure was built. The current owners acquired Parcel 4 in 1968. At that time, there was an old building on the lot with a deck extending out over the ocean. In 1968, the County of Maui issued a building permit to the owners to rebuild the existing building and deck. Many parts of the old building were left intact while additional improvements were made to enhance the property. The improvements were reviewed by the County during construction, and the owners were granted a Certificate of Occupancy upon completion. Since 1968, the building has been remodeled several times, mostly on the inside. In 1985, the owners and their tenant – Oceanhouse, Inc. obtained a building permit for further improvements to the building. In 1987, the Department of Land & Natural Resources informed Oceanhouse, Inc. that the State Survey Office had discovered that the Oceanhouse Restaurant building was encroaching over approximately 1,229 square feet of State land. A proposal was made between the Department and the owners to resolve the problem by requiring the owners to submit a conservation district use application, and upon its approval, the Department would issue a grant of easement covering the use of the State-owned, submerged land in question.

Subsequently, the Land Board at its meeting of October 27, 1989, under agenda Item F-12, approved staff's recommendation to authorize the direct sale of a 20 year, term, non-exclusive easement to Patrick J. Ballenger and Mariana Van Blom Trust for maintenance and repair of existing concrete piers and for use, repair, and maintenance of the existing improvements constructed thereon. Grant of Non-Exclusive Easement S-5217 was executed on September 17, 2002. The rent for the first 10 years was \$9,350 per annum.

ANALYSIS:

Applicant is not proposing to change the current use. Staff is recommending the character of use be simply: deck. The original documents cite 'concrete piers' when in actuality there are concrete posts on the State submerged lands and it is supporting a wooden deck owned by the Ballenger's.

The Lessee is in compliance with all lease terms and conditions. Rent is paid up to January 31, 2011. Liability insurance expires on April 1, 2011. Bond is not a requirement. In the past two (2) years, only two Notice of Default letters were issued for not posting the required liability insurance. Insurance certificates were immediately submitted upon receipt of our letters.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from:

DHHL	No comments
County of Maui Planning	No objections
OHA	No response
OCCL	No objections

Pursuant to Section 171-53, HRS, "the board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter." Staff will have to work with the Applicant in obtaining the legislative concurrent resolution.

Currently, Lease of Non-Exclusive Easement S-5217 will be expiring on July 31, 2011. Staff is obtaining Land Board approval early because numerous items need to be accomplished before the new document is issued. There are: (a) appraisal determining the new rent, (b) Governor's concurrence and (c) legislative concurrent resolution.



RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-5-001:004, provided the succeeding owner(s) has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicants fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Mathew Ballenger, Trustee of the Revocable Trust Agreement of Mariana Van Blom dated March 16, 1983, covering the subject area for concrete piers purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-5-001:004, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



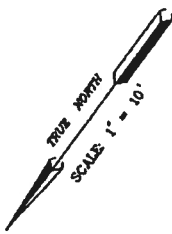
Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

Land Board Meeting November 22, 2010; D-6: Approved with Amendment to Recommendation 3, 5th line down, replace the term "concerte piers" with "deck".

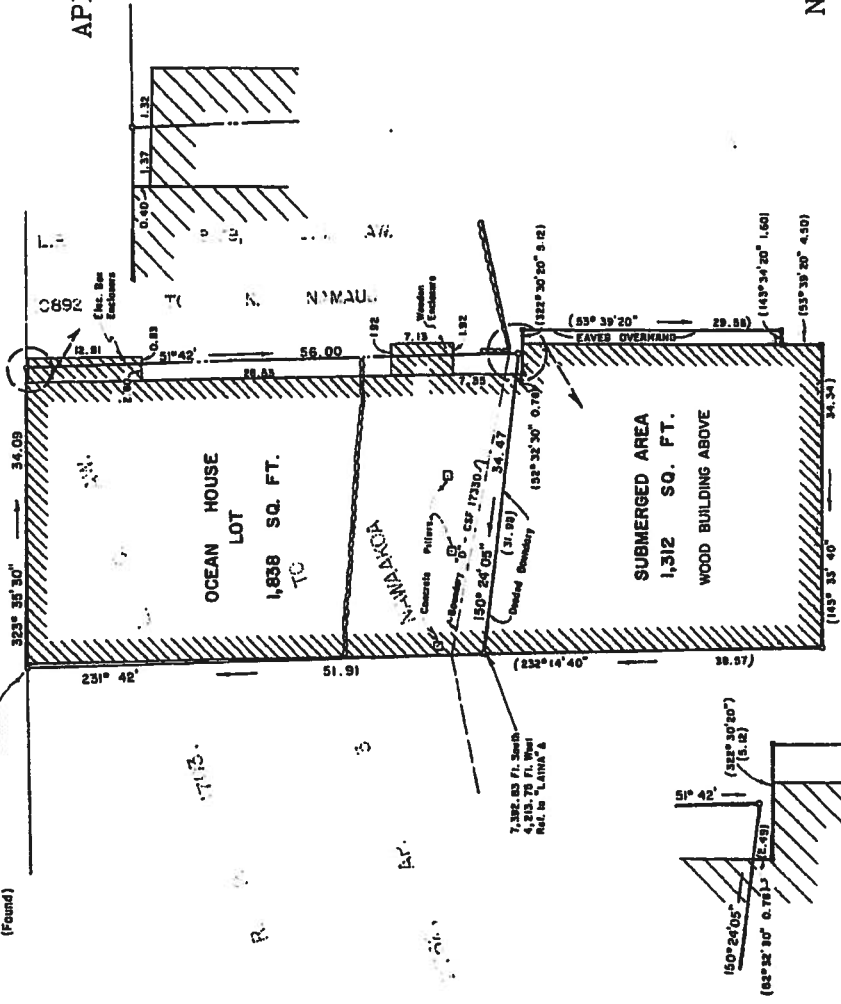
This would be consistent with prior statement in the submittal that the purpose be "deck"



FRONT STREET

TO KAHANAPALI  
7,950.66 Ft. South  
4,175.01 Ft. West  
to  
"LAINA" A  
2" Cut in concrete sidewalk  
(Found)

TO WAILUKU



PLAT TO ACCOMPANY  
APPLICATION FOR USE OF SUBMERGED  
STATE LANDS  
BY  
OCEAN HOUSE  
LAHAINA, MAUI, HAWAII

Scale: 1 inch = 10 Feet Date: January 10, 1990

Prepared at the request of:  
George F. Newcomer  
33 Leahi Avenue, Suite 470  
Kahului, Maui, Hawaii 96732



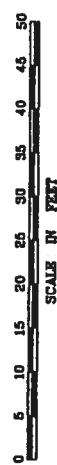
This plat was prepared from an actual  
survey performed on the ground by me  
or under my direct supervision.

*George F. Newcomer*  
GEORGE F. NEWCOMER  
REGISTERED PROFESSIONAL LAND  
SURVEYOR CERTIFICATE NO. 7715-3

NOTES:

All azimuths and record coordinates refer to Government  
Survey Triangulation Station "LAINA".

O C E A N



TAX MAP KEY 4-5-01-4

15" X 21" = 2.19 SQ. FT.

GEORGE F. NEWCOMER - LAND SURVEYORS, INC.

JOB NO. 80-042

PHOTOGRAPHS



VIEW OF SUBJECT

EXHIBIT "B"



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

November 22, 2010

## EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Issuance of Term, Non-Exclusive Easement to Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Mathew Ballenger, Trustee of the Revocable Trust Agreement of Mariana Van Blom dated March 16, 1983, for Deck Purposes.

**Project/Reference No.:** 10MD-202

**Project Location:** Lahaina, Maui, Seaward of TMK (2) 4-5-001:004

**Project Description:** Issuance of Term, Non-Exclusive Easement for Deck Purposes.

**Chap. 343 Trigger(s):** Use of State Lands

**Exemption Class No.:** In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states: "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

**Consulted Parties:** The Office of Conservation and Coastal Lands was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project.

The Land Board at its meeting of April 28, 1989, under agenda Item H-7, approved the Applicant's after-the-fact conservation district use application for commercial use of submerged State land and permission, through a grant of easement or other instrument. (CDUA #MA-11/29/88-2210)

**EXHIBIT "C"**

Exemption Notification for Issuance of Easement  
November 22, 2010  
Page 2

Recommendation:

It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

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Laura H. Thielen, Chairperson

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Date

## APPRAISAL REVIEW CERTIFICATE

Board Approval: November 22, 2010  
Applicant: Patrick J. Ballenger Trust, etal.  
Location: Lahaina, Maui, HI  
Land Area: 1,312 sq. ft.  
Tax Map Keys: (2) 4-5-01: 4 seaward

PSF No.: 10MD-202  
Appraiser: ACM Consultants  
Appraisal Fee: \$1,500  
Date of Review: April 1, 2011  
Valuation Date: August 1, 2011

Appraisal: \_\_\_\_\_ Lease/Permit Rental  
\_\_\_\_\_ Fee Valuation  
\_\_\_\_\_ Land License (\_\_\_\_)

\_\_\_\_\_ New \_\_\_\_\_ Reopening  
\_\_\_\_\_ X Easement Valuation  
\_\_\_\_\_ Other

Appraisal Description: To determine the fair market annual rent for a term, non-exclusive easement for deck purposes at Lahaina, Maui, Hawaii.

Proposed fair market annual rent: \$26,500

### STATEMENT OF THE REVIEWER

I have performed a *technical review* in accordance with Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP) to form an opinion as to whether the analysis, opinions, and conclusions of the report under review are appropriate and reasonable. I **did not** personally inspect the subject property. Based upon the attached appraisal review, I recommend the following:

( X ) ACCEPTANCE, and payment to the appraiser be made accordingly.

( ) REJECTION, appraiser to resubmit without payment for services.

Submitted:

Agnes Chen  
Staff Appraiser

4/1/11  
Date

Concur:

[Signature]  
Land Division, Administrator

4/1/2011  
Date

Approved/

Disapproved:

[Signature]  
Chairperson, BLNR

4/5/11  
Date

**EXHIBIT "B"**

APR 5 2011